

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**KATHY HARTMAN**

Claimant

VS.

**BLUE VALLEY HEALTH CARE, INC.**

Respondent

AND

**HARTFORD CASUALTY INSURANCE COMPANY**

Insurance Carrier

Docket No. 1,056,768

**ORDER**

Respondent and its insurance carrier (respondent) request review of the September 16, 2011 preliminary hearing Order entered by Administrative Law Judge Rebecca Sanders (ALJ).

The ALJ found that the claimant sustained personal injury by accident and that it was more likely than not that claimant acquired methicillin-resistant staphylococcus aureus (MRSA) at work. The ALJ ordered respondent to provide the claimant with the names of two qualified physicians from which claimant was to designate an authorized treating physician. Temporary total disability (TTD) was ordered to be paid at \$315.36 per week for the period April 10, 2011 until July 31, 2011 and at \$346.13 per week beginning August 1, 2011 and until claimant is released to return to work in an accommodated position within her work restrictions, or until she reaches maximum medical improvement, or until further order of the Court. The ALJ did not grant claimant's request to have her medical bills paid as authorized at this time as it was unclear as to the amounts claimant is requesting be paid and why the expenses were incurred.

**ISSUES**

1. Did claimant sustain a personal injury by accident on the date alleged within the meaning of the Kansas Workers Compensation law?;
2. Did claimant's alleged accidental injury arose out of and in the scope of her employment?;

3. Did the ALJ err in ordering medical treatment and care for claimant for all claimed medical conditions when there was no evidence of a causal relationship between work and the claimed medical condition?;
4. Did the ALJ err in ordering TTD for claimant when there is no evidence of disability related to her employment?

Respondent argues that the credible evidence establishes that claimant did not sustain a work-related accident, and therefore the ALJ's Order should be reversed.

Claimant argues that the ALJ's Order should be affirmed in all respects.

#### **FINDINGS OF FACT**

After reviewing the record compiled to date, the undersigned Board Member concludes the preliminary hearing Order should be reversed.

Claimant worked for respondent for 6 1/2 years as a Certified Medical Assistant (CMA). Her job was as a caregiver to the residents. She was responsible for dispensing medications and making sure the residents had their treatment or anything else they may need.

Claimant testified that she worked in the behavior unit, which is behind locked doors because the residents in this unit have a variety of conditions such as Schizophrenia, Alzheimer's and Bipolar Disorder<sup>1</sup>, which at times causes them to be combative. Claimant provided care for approximately 7 to 12 patients. She testified that there were times when she was involved in altercations with the residents. Occasionally, patients became angry, and would take it out on the staff by yelling, biting and kicking the staff.<sup>2</sup> She testified that she had, in the past, been involved in an altercation with a resident where blood was drawn.

On April 9, 2011, claimant began to notice physical symptoms of fatigue and high fever and discovered a sore under her left arm.<sup>3</sup> Claimant reported these symptoms to her supervisor and went home at 8:30 pm, unable to finish her 11:00 pm shift. It is unclear whether she was sent home or whether she chose to go home. Claimant testified that once she got home she tried to sleep, but the pain was so unbearable that she had to go to the emergency room. She was treated by Dr. John Haefele. Dr. Haefele lanced the

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<sup>1</sup> P.H. Trans. at 14.

<sup>2</sup> *Id.* at 14.

<sup>3</sup> Claimant doesn't recall hitting or striking her arm on anything which would lead to the development of a sore on her arm. P.H. Trans. at 37.

sore under her left arm and told her to take Tylenol. Claimant stated that her condition got worse after her sore was lanced.

Claimant was not able to return to work on Monday, April 11, 2011, because her pain was so bad. She sought medical attention again and was diagnosed with cellulitis (a boil) on her left arm. Claimant testified that she also had cellulitis on her chest and back. No lab work was done on the boil on her arm at that time. Claimant's condition didn't improve after the boil was lanced and she ended up having surgery on her left arm on April 15, 2011, with Fernando Ugarte, M.D. Dr. Ugarte ordered lab work from the samples taken from claimant's wound. The lab results indicated that claimant had a MRSA infection.<sup>4</sup> Claimant called respondent from the hospital to let them know she would not be in to work because she was in the hospital. She didn't mention the details of her condition or that it was work-related because at the time she didn't know that it was. Claimant testified that she has, in the past, taken care of a resident with a MRSA infection and that, despite all of the safety precautions that are taken, it was possible that she contracted the infection from that resident.<sup>5</sup>

Claimant testified that after surgery on April 15, 2011, she woke up with blurred vision, chills, and some paralysis in her left arm. She was told that these symptoms would go away once the MRSA cleared. However, claimant continues to have problems with her vision. Her eyes are sensitive to light and she is considered legally blind. She is not able to drive and continues to have paralysis in her left arm. She also continues to experience chills and hot flashes. Claimant denies having any of these problems before April 9, 2011. She believes that the antibiotic she was given for the MRSA infection was so strong that it caused the damage to her eyes, but it was take the medicine and loose her sight or die.<sup>6</sup> Claimant was released from the hospital on April 21, 2011, and notified respondent's Human Resource Department that she needed to talk with someone about filling out an accident form for a workers compensation claim.

Claimant has not worked since April 9, 2011<sup>7</sup>, because she is physically unable to perform her work duties. She has gained 30 pounds because she is unable to do anything. She admits to prior health issues. She had a cardiac catheterization in 2006 and was told that she has high blood pressure. She denies being diagnosed as a diabetic in 2006 or

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<sup>4</sup> Claimant was hospitalized three times because of this infection. The first time claimant had surgery they didn't get all of the infection. The second time claimant had complications and the doctors were worried about her heart and kidneys. After her third surgery, claimant was sent to Lincoln, Nebraska for a wound pump because her wound was draining. P.H. Trans. at 20.

<sup>5</sup> P.H. Trans. at 37.

<sup>6</sup> *Id.* at 24.

<sup>7</sup> Her employment was terminated. She doesn't recall the effective date of this termination.

about being told she could control her blood sugar with diet.<sup>8</sup> She does admit that she saw Dr. Ryan in 2006 when she was counseled about her blood pressure, was encouraged to lose weight and was given medication. Claimant doesn't recall having her blood sugar tested by Dr. Ryan. Claimant last had a full physical in 2000 at a family clinic in Syracuse, Nebraska. Her current medications are Metformin for diabetes and Lisinopril for hypertension and several antibiotics. None of claimant's medical records indicate that the MRSA infection was work-related.

Claimant testified that Blue Cross was paying a portion of her medical bills and she paid out of pocket for her co-pays and prescription costs.

### **PRINCIPLES OF LAW AND ANALYSIS**

In workers compensation litigation, it is the claimant's burden to prove his or her entitlement to benefits by a preponderance of the credible evidence.<sup>9</sup>

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.<sup>10</sup>

If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act.<sup>11</sup>

The two phrases "arising out of" and "in the course of," as used in K.S.A. 44-501, et seq.,

... have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable. The phrase "in the course of" employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer's service. The phrase "out of" the employment points to the cause or origin of the accident and requires some causal connection between the accidental

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<sup>8</sup> P.H. Trans. at 34.

<sup>9</sup> K.S.A. 2010 Supp. 44-501 and K.S.A. 2010 Supp. 44-508(g).

<sup>10</sup> *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

<sup>11</sup> K.S.A. 2010 Supp. 44-501(a).

injury and the employment. An injury arises “out of” employment if it arises out of the nature, conditions, obligations and incidents of the employment.”<sup>12</sup>

Claimant began experiencing symptoms while at work. The boil, the fever and the arm pain all occurred in the course of claimant’s employment with respondent. What is not explained in this record is how the boil and its related symptoms arose out of the employment. Claimant provides a history of combatant patients, some of whom may have had MRSA. However, claimant provides no history of an incident at work with any patient that supposedly led to the boil, the fever and arm pain. A connection between the boil and the MRSA, or between the loss of eyesight and the MRSA, is important, but not conclusive if there is nothing to connect the development of the boil, the arm pain or the fever to the job.

In this instance, claimant has failed to show the necessary connection. Without evidence to connect claimant’s physical symptoms to some accident at work, benefits cannot be awarded.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>13</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2010 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

### **CONCLUSIONS**

Claimant has failed to prove that her injuries arose out of the conditions of her employment with respondent. The award of benefits must, therefore, be denied and the Order of the ALJ reversed.

### **DECISION**

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge Rebecca Sanders dated September 16, 2011, is reversed.

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<sup>12</sup> *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 689 P.2d 837 (1984); citing *Newman v. Bennett*, 212 Kan. 562, Syl. ¶ 1, 512 P.2d 497 (1973).

<sup>13</sup> K.S.A. 44-534a.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of December, 2011.

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HONORABLE GARY M. KORTE  
BOARD MEMBER

c: Judy A. Pope, Attorney for Claimant  
Patricia A. Wohlford, Attorney for Respondent and its Insurance Carrier  
Rebecca Sanders, Administrative Law Judge